

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

UNITED STATES OF AMERICA,

v.

**EDWARD PAUL NEWSOME,
Defendant.**

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Criminal Case No. 3:10-CR-246-M-1

**RECOMMENDATION REGARDING MOTION TO PROCEED
IN FORMA PAUPERIS ON APPEAL**

Before the Court is Defendant's motion to proceed *in forma pauperis* on appeal filed on January 3, 2018. Doc. 127. Contemporaneous with that motion, Defendant filed a pleading titled *Pro se Revised Notice of Belated Appeal Due to Appellate Counsel's Failure to Raise, Address, and Argue the District Judge's Believe [sic] that she was Required to Disregard the Effect of the 5-Year Mandatory Minimum for the 924(c) Charge/Count When Determining the Underlying Sentence for the Other Count Based on Now Supreme Court's Clarifying Rulings in/under Dean v. United States (2017) and Hicks v. United States (2017)-Nunc Pro Tunc and Appointment of Counsel*. Doc. 126


Apparently, Defendant seeks to appeal from the May 13, 2011 judgment of conviction. Indeed, he does not identify any subsequent order from which he seeks to appeal. Over six years have elapsed since the entry of that judgment; thus, an appeal would present no legal points of arguable merit and would therefore be frivolous. Notably, Defendant's his first motion to vacate sentence under 28 U.S.C. § 2255 was denied in February 2015, and his successive section 2255 motion was transferred to the Court of Appeals in August 2016.

Based on the foregoing, the Court should deny the motion to proceed *in forma pauperis*

on appeal and certify, pursuant to FED. R. APP. P. 24(a) and 28 U.S.C. § 1915(a)(3), that the appeal is not taken in good faith.

Although this appeal should be certified as not taken in good faith under 28 U.S.C. § 1915(a)(3) and FED. R. APP. P. 24(a)(3), the defendant may challenge this finding by filing a separate motion to proceed in forma pauperis on appeal with the Clerk of Court, U.S. Court of Appeals for the Fifth Circuit, within 30 days of the District Court's order adopting this recommendation.

SIGNED January 13, 2018.



RENEE HARRIS TOLIVER
UNITED STATES MAGISTRATE JUDGE